



ANIL AGRAWAL AND COMPANY

Chartered Accountants



NRI - Non Resident Indian Frequently Asked Questions on Income Tax

This write up is an endeavor to explain in brief some of the basic provisions of Income Tax Act, 1956 and FEMA regulations applicable in case of Non Resident by way of frequently asked questions.

The questionnaire has been prepared based on some practical situation faced by us during our professional practice.

The FAQs have been prepared keeping in view tax provisions applicable for AY 2014-15.

DISCLAIMER: This write up provides information of general nature and is not meant to be a substitute for professional advice.

Q) Who is NRI as per Income Tax Act?

A) Residential status of an individual or HUF or a company is of great importance in Indian Income Tax Act as the liability to pay tax in India does not depend on the nationality or domicile of the Tax payer but on his residential status. Residential Status is determined on the basis of physical presence i.e. the number of days of stay in India in any year. An individual is resident if any of the following conditions are satisfied:

- (i) he stayed in India for 182 days or more during the previous year, or
- (ii) he stayed in India for 365 days or more during the four preceding years and stays in India for at least 60 days. 182 days in case of an Indian citizen or a person of Indian Origin coming on a visit to India or 182 days in case of an Indian citizen going abroad for an employment during the previous year. Otherwise he is Non Resident.

Hindu Undivided Family (HUF) or firm or other Association of persons is resident of India except in cases where the control and management of its affairs is wholly situated outside India in the previous year

A company is resident in India if-it is an Indian company, or during the previous year, the control and management is situated wholly in India.

Q) I am NRI, do I need to file my Income Tax Return for A Y 2014-15?

A) You need to file your return provided your taxable income in India during the Assessment Year 2014-2015 was above the basic exemption limit of Rs 2 lakh OR you have earned short-term or long-term capital gains from sale of certain investments and assets, even if the gains are less than the basic exemption limit.

For NRIs, certain short term or long term capital gains from sale of investments or assets are taxed even if the total income is below the basic exemption limit.

There is an exception: If your taxable income consisted only of investment income (interest) and/or capital gains income and if tax has been deducted at source from such income, you do not have to file your returns.

Q) Is Income Tax Return need to file compulsory Online for NRI for AY 2014-15?

A) Central Board of Direct Taxes (CBDT) in India issued a notification which has made it mandatory for individuals who have annual gross total income in excess of Rs 5 lakh to file their returns online from Assessment Year 2014-2015. This applies to all individuals including non resident Indians. So as an NRI with gross total income exceeding Rs 5 lakh in Assessment Year 2014-2015, you must file your returns electronically. In case your taxable income exceeds Rs.5 lakh in the previous year, you would be required to file the return of income electronically either using the digital signature or through submission of the verification Form ITR-V after electronically filing the return of income. In case your income does not exceed the above limit, you would also have an option to file the return of income in paper form.

Q) Are NRI were liable to pay advance tax for Assessment Year 2014-2015?

A) As per the Income Tax Act, Individual must pay advance tax in three installments during the year in case the tax payable is likely to be Rs 10,000 or more after considering TDS deduction. In case of default interest is generally 1 percent per month for the default amount and extends till the date of payment. Therefore, NRIs should evaluate if they were liable to pay advance tax and whether the same was paid in time.

Q) What is last date to file your Income Tax Return? What if NRI do not have any tax payable?

A) The last date to file returns for the financial year Assessment Year 2014-2015 is July 31st 2014. However, If you do not have any tax payable (that is all your tax has been deducted at source), you can still file your tax return by 31st March 2015 without any penalties

Q) What if NRI do not file return till 31 March 2015?

A) If you do not file your tax returns even by the 31st of March 2015, you may be charged a penalty of Rs 5,000 for every year of delay or sometimes may not be able to file your returns at all after 2016.

Q) My NRO account TDS has been deducted at source @30%. My interest income is 1 Lakhs Rs? Do I Need to File Return?

A) As your total income is less than 2 Lakh Rs, you are not liable to file return. However you can claim refund of Rs 30,000/- of your TDS deducted for which you should file return. If you are expecting a refund, make sure that you put accurate bank details such as account number and IFIC code of the branch as refunds are processed electronically

Q) Can NRI get Refund of TDS by Filing IT return for Last year 2013 March Ending.

A) Yes you can file your return for Financial Year ended 2013 and get refund

Q) What all income is exempt for NRI?

A) Dividends from equity shares and equity mutual funds is tax free in India. Interest received on the NRE account and FCNR account is tax free. Long term capital gains on equity shares and equity mutual funds (provided you pay securities transaction tax at time of sale). Further, If you have given a property on rent, you can claim an ad hoc deduction of 30% of net annual value as repairs and maintenance expenses in addition to claiming a deduction on mortgage interest. Health insurance premium in India for yourself or your dependents, you can claim a deduction under section 80D. If the health insurance is taken for your spouse and dependent children, you can claim a deduction of Rs 15,000 per annum. An additional Rs 15,000 is available as deduction on insurance premium paid on behalf of your parents. If either of your parents is over the age of 65, the additional deduction will be Rs 20,000 instead of Rs 15,000. Contributions to an approved charity, you can claim a deduction under section 80G. Investments such as PPF, life insurance premiums, etc. can be claimed as deduction under section 80C up to a total of Rs 1 lakh.

Q) I am NRI has deposited Rs. 1 crore in a non-resident ordinary (NRO) account in the form of fixed deposit. I want to transfer the amount from NRO to a non-residential external (NRE) account. Is it compulsory to give Form 15CB and 15CA to banks? Who has to file these forms? The bank has deducted tax at source when it credited the interest amount. What is the ceiling for transfer from NRO to NRE during a year?

A) An NRI can transfer / remit out of the NRO account subject to production of documentary evidence in support of acquisition by the remitter and an undertaking by the remitter along with a certificate by a chartered accountant in Form 15CA and 15CB. As per regulations, NRI are permitted to transfer a maximum of \$1 million per financial year to your NRE account. The transfer will be subject to payment of applicable taxes. So far the amount being transferred to the NRE account represents balances for which tax has already paid or exempt there shouldn't be additional tax.

Q) I am a non-resident Indian (NRI) and have a piece of agricultural land and an apartment in India. I earn agriculture income and rental income from these two. Do I need to file income tax return? Also, can an NRI buy agriculture or farmland in India?

A) NRI would be subject to taxes in India on any income accruing or arising from an asset located in India. The agricultural income earned by you would be exempt, whereas the rental income from the house property would be subject to tax. You would be under an obligation to file an income tax return in India on or before 31 July 2014 for financial year 2013-14 if your taxable income exceeds Rs.2 lakh in the previous year. However, you may note that the income tax law prescribes a specific method of computing taxable income where the taxpayer has earned agricultural income. While this type of income is exempt from tax, it is nonetheless included in the total income for rate purposes.

Q) Is NRI allowed to buy Agriculture property or Farm house in India?

A) NRIs and Persons of Indian Origin are not allowed to buy agricultural property, plantation or a farm house.

Q) What are the tax implications for an NRI looking at selling his property in India?

A) If the property is more than 3 years old, long term capital gains tax will be incurred on the sale of the property. On long term capital gains, tax is payable @ 20%. However, tax can be minimized by making alternative investments in India.

Q) I am a NRI living in US. Can you please advise me if long term capital gains tax are payable on sales of shares purchased by paying STT, and if it is exempt is there a limit?

A) LTCG is fully exempted on sale of listed company shares, purchased by paying STT, provided the transaction is long-term. i.e that share are hold for period of more than 12 months

Q) I an NRI, bought a property in 2005 and sold it in 2014 at a difference of Rs 40 lakhs for Rs 80 lakhs. If I repatriate this amount to the US, am I liable for any tax? What is the procedure to repatriate money to the US?

A) You have earned a long term capital gain on your property. You have to pay taxes in India on this income and then obtain a certificate from a chartered accountant. After this certificate only, you would be able to repatriate the money abroad.

Q) During Year Ended 2014, I, NRI leased out my building to a bank which is paying rent monthly but is deducting TDS. Can you please let me know what kind of documentation is required from the bank to submit my taxes in India? Is form 16 sufficient?

A) Form 16 is enough to determine your income on rent and TDS

Q) Is the money received from sale of inherited property in India taxable for an NRI? Earlier it was mandatory to put it in an NRO account but now with the RBI go ahead can we transfer it to NRE account provided the tax is paid?

A) Yes, the money received from NRI is taxable in India. Sale proceeds will first be credited to NRO account. Then you have to obtain a certificate from the CA relating to payment of taxes after which the money would be transferred from NRO account to NRE account.

Q) I hold NRI status for this year 2014. I have FD and RD accounts in ICICI Bank and they are deducting taxes. Do I need to pay the tax for the interest I get from FD and RD?

A) If the FD and RD were opened under NRE status as (NRE-FD or NRE-RD) then the interest earned on the same will not be taxable. However, in case the FD/RD was opened when you were resident Indian then the said FD will be converted to NRO- FD (upon your status being changed to NRI) and the interest earned on the same will be subject to TDS. However, depending on your cumulative tax liability in India, you may claim refund while filing tax return in India.

Q) If I have 8 year NRE FRD and if in second year I become resident, how NRE FDR will be treated after third year and will interest thereon be taxable?

A) For returning Indians, funds held in fixed deposits in NRE accounts, interest will be payable at the rate originally fixed, provided the deposit is held for the full term even after conversion into resident account. However, the interest earned after the status was updated to resident will be taxable.

Q) If I buy a property out of NRE funds and later on sell the property and credit the proceeds to my NRO account, what are the tax implications?

A) Profits earned by selling property in India will be liable to Capital gain [ie the difference between the sale value of the property and its cost of purchase].

Capital gains can be classified as short term (up to 36 months) or long term (more than 36 months), depending on the period for which the property is held. Short-term capital gain will be taxed at normal slab rates and long-term gain will be taxed at 20%.

If a residential property is sold after being held for more than three years and the proceeds are reinvested for purchase of a new residential property, then the capital gains will be exempt to the extent of the amount reinvested. The exemption is subject to the new property being purchased within a year before or two years from the date of sale, or if new property is being constructed within three years from the date of sale.

Q) Can NRIs can also claim exemption by investing the amount of capital gains in bonds issued by the National Highways Authority of India (NHAI) or Rural Electrification Corporation (REC) in case of Profit from sale of property which is long term?

A) Yes Investment in the specified bonds is to be made within six months of such sale and there is a lock-in period of three years for such bonds.

Q) I am an Indian resident taking up employment abroad. I want to know whether I am eligible to claim exemption of income under NRI category. If the employment is in Dubai, where there is no tax on income, will it make any difference?

A) Your employment in Dubai will not make any difference. As per taxation laws in India, your overseas income getting credited to your NR account in India will not be taxed. It is indifferent to overseas country tax regulations.

Q) I have an account in Qatar and want to send money to my resident (saving) account in SBI Bank, Will it be taxable? What is the ceiling for wire transfer? Can I open an NRO/NRE account before completing first six months out of India.

A) Yes, you can send money to your resident account and the said amount will not be taxable because it will be from your overseas earnings. There is no upper cap on the amount you can wire transfer to a bank account in India. Yes, based on a valid work visa and company offer letter, you can convert your existing resident account into NRO and open a NRE account as well.

Q) Can an NRI returning back to India, continue to hold his foreign earnings overseas, and gradually bring the money back to India as and when required?

A) You can bring your earnings as you wish. You should take care of income tax of your earnings. After you returned to India, your income earned outside India will not be taxable in India provided it is received in India for two years. After the two years, your worldwide income would be taxable in India.

TAX RULES WHEN AN INDIAN RESIDENT WORKS ABROAD

Q) Me and My wife are United States citizens with Overseas Citizenship of India cards. We purchased one apartment in 2006 and another in 2009. We have plans to settle down in India eventually. We would like to sell our apartment we purchased in 2006.

1. Can you please explain briefly what is this capital gains tax and where does that apply?

2. If we sell this apartment in about two years after we settle down in India, are we eligible for any tax exemption?

3. If we use the money received from the sale of this property for doing interior work (maybe about Rs 5 million or \$84,000) on the other apartment, will that help to reduce or avoid capital gains tax altogether?

A.

1. You will have earned long-term capital gains which is taxed at 20.6 percent. The gains are equal to your sale price less indexed cost of acquisition. This indexed cost is the ratio of the index of the financial years (April to March) during which you have sold and purchased the property. Unless the details of the dates of purchase and sale as well as the cost of acquisition and the targeted sale price is indicated by you, it is impossible to arrive at your tax liability.

Fortunately, there are a few ways and means to save this tax.

2. Whether you sell the property now, as a Nonresident Indian, or after returning to India permanently, the tax liability will not change (as per the existing law).

3. No. All you will be doing is to increase the cost of acquisition of the property which gets renovated. However, there are other means available to save the tax on long-term capital gains.

Q) My wife and I live in India. Our son lives in the US. He is in the process of selling his property and reinvesting the money into a bigger property. The sale of the old property is still being finalized while he has to make the down payment on the new property. He was wondering if we could provide him with short-term financial assistance till the sale of the old property is through.

I understand that the law allows Indian residents like us to send him up to \$75,000 per year. But he is in need of more. Since I would have exhausted my limit, could I gift money to my wife and in turn have her use the same to send to our son under her own individual \$75,000 limit. She would not use the full limit. He needs up to \$100,000 and my wife would send him the balance \$25,000. Is this workable? Will it be allowed or considered as circumventing the law to send foreign exchange to my son abroad.

A. The limit under the Liberalized Remittance Scheme (that was earlier \$200,000 and now brought down to \$75,000) is applicable per person per financial year.

When you gift any asset (including any sum of money) to anyone including your wife, ipso facto, you end up transferring ownership of the asset from yourself to the donee. Therefore, once you gift the funds to your wife, the funds become hers to apply as she wishes to. If she wishes to use her limit under the LRS to send money to her son, she is perfectly within her rights to do so. There is no circumventing of the law here; it is a clever way of using the provisions of the law to your optimum advantage.

Q) I am an NRI living in the United Kingdom. I have property in Pune, Maharashtra, that I wish to rent out. The prospective tenant has asked me to provide him with my Permanent Account Number and address in the UK. He tells me this is a legal requirement. Is this indeed a legal requirement and will there be any problem with providing this additional information?

A. Your tenant must be an employee who gets a tax deduction on the rent paid. Providing the PAN and address of the landlord is indeed a new legal requirement. As per Circular No 08/2013 issued by the Central Board of Direct Taxes, India, if the annual rent paid by an employee exceeds Rs 100,000 (\$1,700) per annum, it is mandatory for the employee to report PAN of the landlord to the employer.

In case the landlord does not have a PAN, a declaration to this effect from the landlord along with the name and address of the landlord should be filed by the employee. As long as you are reporting the rent received and submitting the same to tax in India, there is no issue with providing this information. It is the tax authority itself that has allotted the PAN to you. So in a way, you are providing information to them that they already have.

Q) I am an environmental consultant and have recently got an assignment from the government of Mexico for which I would be paid in US dollars. I will be visiting Mexico often during the year. However, I will continue to be a Resident of India. Since I will be discharging my services abroad, I think there would neither be any income tax nor any service tax on the income earned from Mexico. Is this correct?

A. Income earned by a resident of India from whichever source is taxable in India. Since you continue to be a resident of India, even if the income is from services discharged abroad, the same will be taxable in India. If you are paying any tax on the same in Mexico, you can deduct the same from your tax liability in India and pay only the balance.

As far as service tax is concerned, since the services are entirely offered abroad, there would be no service tax applicable under Export of Services rules.

Q) My wife has inherited land in Kerala from her father, which he had inherited. The land is a subject matter of compulsory acquisition from the National Highways Authority of India. In such a case where there is no trace of cost of land at all, how can we arrive at cost of acquisition for the purposes of Capital Gains?

A. For assets acquired prior to 1981 (either by the purchaser or previous owner from whom the asset is inherited or acquired as a gift), the value as April 1, 1981 has to be adopted as the actual cost. You can get the value of the land as on that date assessed from an official chartered valuer who will provide you with a certificate of the assessed value. This cost can then be indexed as per the declared figure to arrive at the indexed cost. The same can then be reduced from the sale price to arrive at the capital gain amount. Also, regardless of the period of holding of the land by your wife, the gain will be long-term capital gain.

Q) I have been out of India since the last 12 years. I will be returning for permanent settlement in December. I am not clear about when the Resident not Ordinarily Resident status it will apply and for how long. Also, to whom should I apply to get my RNOR status? If I get the RNOR status, any interest accrued to my Term deposits and Savings Bank deposits in NRI accounts will not attract any tax in India, right?

A. Since you are returning in December, for financial year 2014-15, you will continue to be a Nonresident Indian even though you have returned to India. This is by virtue of the fact that you will end up spending less than 182 days in India in the financial year. You will be RNOR for the next two financial years i.e FY 15-16 and FY 16-17. Note that the RNOR status is a sub-set of the Resident Status. You are Resident (but Not Ordinarily Resident). Consequently, you are not entitled to continue your NRI-related bank accounts and should get them redesignated as Resident accounts.

Also, the interest on the erstwhile NRE account (now redesignated as Resident deposit) will be taxable in the normal course. It is only the interest on the Foreign Currency Nonresident account that will continue to be tax-free till such time that you retain your RNOR status.

Q) I am a United States citizen. I receive Social Security pension income. I have not yet applied for Overseas Citizenship of India. If I want to stay for a prolonged time in India, six months or longer, do I have to take permission from any authority? How can I do so without losing my NRI status? I will be depending mainly on my social security checks to take care of my living expenses for which I will need to transfer the money to India; will the social security income become taxable in India?

A. The law for its part welcomes you to India without having to take any special permissions etc as long as you have a valid visa. Since you are no longer an Indian citizen, for any stay beyond six months, you will have to register your presence at a local police station. If you wish to bypass this process, then you would need to obtain an OCI card. Once you cross the 182 days limit in a FY, you will become a Resident of India. As such, your global income will be taxable in India. Under the Double Tax Avoidance Agreement treaty that the US has with India, Social Security payments are taxable, if at all, only in the US and not in India. However, other income could become taxable after the first two years.

For the first two years of your stay in India, your status would be that of RNOR, where any foreign income remains tax-free in India.

Q) My family and I live in New Zealand. Recently the building in India in which I owned an apartment was demolished for a redevelopment project. The developer is allotting a new flat to me, which is slightly bigger. I have already entered into an agreement with another person (an Indian resident) to sell the new flat. Since I have not paid for this new flat as such, for capital gain purposes, would the cost be zero? Is there a way to save the tax by buying government bonds, etc?

A. It is absolutely necessary for you to get the value of the redeveloped flat that you owned as on the date you were given possession of the flat by the builder. This can be obtained from the builder or the neighbors who have bought their flat from the builder. If this is not possible, you can get the flat assessed for its value on that date from an official valuer. This is your deemed cost of acquisition of the redeveloped flat.

If you had been the owner of the redeveloped property for a period of over three years, compute the long-term capital gain based on this deemed cost of acquisition. You can save the 20 percent tax on this capital gain by investing this amount, (limited to Rs 5 million or \$83,000 per FY), in Capital Gains Bonds of the Rural Electrification Corporation or NHAI. If you had been occupying the property for less than three years, you will earn short-term capital gains.

NRI- UPDATES

ABOUT US

We are a partnership CA firm engaged in providing consulting services to Indian and multinational clients. The firm has been founded by Mr. Anil Agrawal, FCA who is alumni of Ernst & Young and has more than 12 years of experience in the fields of International Taxation and Regulatory matters. Our client comprises of Corporates, LLPs, Firms, NGOs & HNI's.

We have dedicated team of Chartered Accountants, Company Secretary, Semi qualified and adequate support staff who are competent people with sharp insight and unique skill set.

Our Current area of operation is NCR region comprising of Delhi, Gurgaon, Manesar and Noida. Our present multinational clientele includes clients from Turkey, USA, Australia, Dubai, Japan and Netherland.

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